

EXHIBIT E

No Love for Rhymes

by Leah Messinger on 06 September 2007, 18:25

Categories: General news - Media - Internet

Topics: nbc , Red Hat , News Corp. , U.S. district court , Hulu , Lulu , Bob Young , Jason Kilar

Trademark disputes often lack rhyme or reason. In the case of Lulu v. Hulu, at least there's a rhyme.

This week Lulu, a company that helps users self-publish books and multimedia content, filed a complaint in North Carolina District Court against Hulu, the NBC-News Corp.-backed professional video site still under development. In a statement, Lulu accuses Hulu of trademark infringement, unfair and deceptive trade practices, and cyberpiracy.

"It is clear we are required to move quickly to protect our intellectual property and defend ourselves against this infringement before it significantly damages our business," said Lulu CEO Bob Young in a statement.

Mr. Young founded Lulu in Raleigh, North Carolina in 2002 and prior to that he co-founded open source software company Red Hat. Now he's concerned that that Hulu is trying to capitalize on Lulu's audience by creating confusion in the marketplace. (A reporter trying to keep the companies straight as she reports this story can see his point.)

Though Hulu won't enter private beta until October, the site received its official name last week. Previously it had been referred to only as "Newsite." Once it launches it will offer up shows from NBC and Fox, including Heroes, 24, and Bones, to Internet viewers.

And that's a concern for Mr. Young's Lulu.tv, which lets users sell their digital media creations through the site. Although Lulu.tv offers an outlet for the sale of user-generated video content, Mr. Young seems to be concerned that Hulu's studio-produced offerings will steal some of the online video spotlight he's worked hard to capture. In the statement Lulu points to a concern that Hulu's products and services "are related to, and even identical to, the services that Lulu provides under its Lulu marks." To the lay viewer, however, the sites appear to have little overlap.

Hulu spokesperson Christina Lee declined to comment on current litigation.

Despite the fact that the two sites appear to offer vastly different services, it's no wonder Hulu's \$100 million private equity investment for a valuation reportedly worth \$1 billion has Mr. Young worried about confusion in the marketplace.

"We have spent more than five years and tens of millions of dollars in investment successfully building the Lulu brand and website into a place for millions of creators and consumers to publish, buy, sell and manage digital content," said Mr. Young.

For his part, when Hulu CEO Jason Kilar announced his venture's new name last week his tone made it seem as if the word "Hulu" had been chosen practically on a whim.

"Objectively, Hulu is short, easy to spell, easy to pronounce, and rhymes with itself," Mr. Kilar wrote in a blog post.

In the North Carolina courts, however, rhyming may not prove to be such a good thing.

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New media News

5.30pm

Lulu site sues News Corp

Jemima Kiss
Thursday September 6, 2007
[MediaGuardian.co.uk](#)

Self-publishing site Lulu.com initiated legal action for trademark infringement today against News Corporation and NBC Universal over their joint venture video site - which they christened Hulu.com.

Lulu alleged that the two media giants have tried to create confusion in the marketplace with their choice of domain name.

The firm added that the choice of name represents a "definitive encroachment" on the business of Lulu.com because both sites publish digital content.

Bob Young, the chief executive of Lulu.com, described the branding of the rival Hulu service as a threat to the Lulu franchise and \$10m invested in it.

"This is what trademark law is all about," he told MediaGuardian.co.uk.

"But the big problem is that neither of us know where our businesses are going in the future.

"The odds are we'll both end doing something other than what we started out to do.

"It is highly likely that in five years time, 80% of our revenues will come from completely different products and services."

Mr Young named Lulu.com after his pet name for his three daughters, but is also American slang for a remarkable person or thing.

He said that Lulu.com has had no commercial issues with

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Lulu: claimed the Hulu name was a 'definitive encroachment' on a trademark

other similar domains, such as the site of the pop singer Lulu, because they focus on different business areas.

In a statement on the holding page for Hulu.com, its chief executive, Jason Kilar, said the name Hulu had been chosen because it "is short, easy to spell, easy to pronounce, and rhymes with itself.

"Subjectively, Hulu strikes us as an inherently fun name, one that captures the spirit of the service we're building".

Internet records show that until recently, the domain hulu.com was owned by a San Francisco couple who used the site to display drawings by their seven-year old daughter. It is not known how much News Corp and NBC paid for the valuable four-letter domain.

Hulu did not respond to a request for comment.

Lulu.com began five years ago by allowing authors to self publish their own books. It has since expanded to introduce photos and videos.

News Corp and NBC are hoping Hulu.com will challenge YouTube's supremacy in the online video market. The site will begin beta testing next month.

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Lulu sues Hulu; you know why

Web publisher takes on NBC, News Corp. site

FRANK NORTON, Staff Writer

Bob Young doesn't fear a fight.

In his previous life, he helped start and run Red Hat, the Raleigh company that took on software titan Microsoft.

Now he's top dog at Internet publisher Lulu and he's getting set to scrap with Hulu, a Web venture with a strikingly similar name backed by media giants NBC and Rupert Murdoch's News Corp.

Morrisville-based Lulu claims Hulu is an illegal copycat of its name and business strategy. In a complaint filed Wednesday in the U.S. District Court in Raleigh, Lulu alleges Hulu wants to usurp its position in the digital media market by confusing the audience.

The lawsuit accuses the venture of trademark infringement, deceptive trade practices and cyber piracy. It comes less than a week after NBC and News Corp. selected the name Hulu. The site is scheduled to start in October.

"We have spent more than five years and tens of millions of dollars in investment successfully building the Lulu brand and Web site," Young said. "Then we come to work last Thursday and discover a new firm with a phonetically identical name announced plans to do what we are already doing."

NBC and News Corp. were mum on the lawsuit Thursday. "We have no comment regarding any litigation," said Hulu spokeswoman Christina Lee.

That could be a sign the suit is an open and shut case, Young said. His company is asking the court to bar Hulu from registering the name, or any name "confusingly similar" to Lulu.

Young founded Lulu in 2002 as a self-publishing Web site where authors could establish intellectual property rights and market their work. Lulu makes money taking a cut of sales generated by self-publishers.

The company has blossomed into a multimedia venue for consumers and purveyors of video, music, art and other published works. It now claims 1.2 million registered users and a growth rate of nearly 15,000 users each week.

Like YouTube, Lulu is riding the explosion of high-speed internet and online content trading. NBC and News Corp. are keen to enter that space to pump content from their TV networks and film studios.

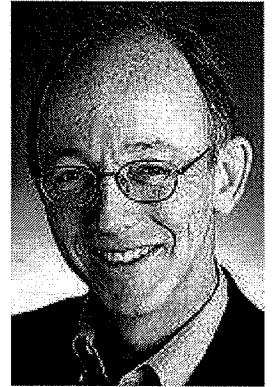
"This is a game changer for Internet video," Peter Chernin, president and chief operating officer of News Corp., said in announcing the venture last month. The venture predicts reaching 96 percent of U.S. broadband users through distribution deals with AOL, MSN, MySpace and Yahoo.

So why the name Hulu?

"Objectively, Hulu is short, easy to spell, easy to pronounce, and rhymes with itself," NBC Universal CEO Jason Kilar wrote in a statement last week. "Subjectively, Hulu strikes us as an inherently fun name, one that captures the spirit of the service we're building."

Young isn't buying it.

"They're credible and should have known better," he said. "If it were just a little startup, we probably would



Bob Young says this is the first suit he has filed.

have tried to engage them in a conversation to first point out the mistake. But these guys are multibillion-dollar corporations. We have to assume that with the credibility of their investors, they know what they're doing and are doing it intentionally."

Young noted the word "hulu" means cease and desist in Swahili.

While at Red Hat, Young helped carry the Linux software publisher and its open-source software movement from relative obscurity to corporate standard. The company is now the world's largest distributor of the Linux operating system, one of the top competitors to proprietary systems from Microsoft.

Despite relishing his companies' underdog status, Young said he has been in the business world 29 years and had never filed a lawsuit until now.

While at Red Hat, he also took the company public, a strategy he may carry over to Lulu when it reaches the right size -- about \$100 million in annual sales, Young said. He expects Lulu, which has 109 employees in the United States, Canada and England, to have \$25 million in sales this year and double its annual revenue for the near future.

But gone is the possibility of trading on a U.S. stock exchange under the symbol "LULU." Canadian clothing maker Lululemon Athletica snatched that symbol when it started trading in July.

"Isn't that annoying," Young chuckled. "They beat us to it."

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EXHIBIT E-1



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MEDIA BIZ

With Paul R. La Monica

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September 6, 2007

Lulu sues Hulu

Last week, when GE's (GE) NBC Universal unit and News Corp. (NWS)-owned Fox announced that they were going to call their online video joint venture Hulu, I made fun of the moniker, saying that in addition to being a terrible name, it also might confuse people since it sounded a lot like Lulu, an online custom book publisher.

I was just joking. But it turns out that Lulu is actually pretty concerned. So concerned, in fact, that it announced Thursday that it was filing a trademark infringement lawsuit against Hulu in the U.S. District Court in Raleigh, NC, which is where Lulu is based.

In a statement about the filing of the complaint, Lulu said that Hulu "as a result of their recent name and internet domain announcements, have intentionally attempted to create confusion in the marketplace. Hulu, in name, as a mark and in their business as a digital content distribution platform, represents a definitive encroachment. In addition to the conflict in business for digital video, Hulu's trademark filing, filed on August 22, 2007, identifies various products and services, many of which are related to, and even identical to, the services that Lulu provides under its Lulu marks."

Lulu CEO Bob Young added in the company's statement that the company has "spent more than five years and tens of millions of dollars in investment successfully building the Lulu brand and website into a place for millions of creators and consumers to publish, buy, sell and manage digital content. It is clear we are required to move quickly to protect our intellectual property and defend ourselves against this infringement before it significantly damages our business."

A spokeswoman for Hulu in Los Angeles said the company had no comment about the litigation; neither did a spokeswoman for NBC Universal in New York. A spokesman for News Corp. was not immediately available for comment.

So does Lulu really have a case? That's ultimately for the lawyers to argue about and a judge to decide but I'm not sure that too many Web users will really confuse Hulu, despite my sarcastic comments, with Lulu. Sure, both are technically online media companies. But there's a big difference between publishing books and posting online video from NBC and Fox.

And if the litmus test for trademark infringement was rhyming, then that could open up the courts to scores of somewhat frivolous lawsuits. But in a phone interview with me Thursday, Young said that he does believe there will be market confusion and that's the reason behind the lawsuit.

"Phonetically, the names are identical. It's virtually impossible to say Lulu without being confused with Hulu.

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And the big issue is that we're both in the Internet content publishing business," Young said. "This isn't about money. The simplest thing is for NBC and News Corp. to pick a name that doesn't confuse them with us. We're disappointed to be in a position to have to do this."

SPECIAL OFFER:

That said, NBC and News Corp. could be facing a tough fight. Considering that Young is the former head of Linux software company Red Hat (RHT), he has experience in going after established giants in court, having taken part in class action lawsuits against Microsoft (MSFT) during its antitrust battles. So he probably won't, to quote Tom Petty, back down easily.

So it might make more sense for News Corp. and NBC to just go back to the drawing board and come up with a new, i.e., better name. After all, even without the Lulu lawsuit, there are other problems. For one, there is a WiMax technology company based in Stockholm, Sweden called Hyper Urban Level User Sweden that goes by the name of HULU.

Plus, shortly after the Hulu name was announced last week, the influential blog TechCrunch pointed out that Hulu is actually Swahili for "cease" and "desist."

Ah, the irony.



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Posted by Paul R. La Monica 10:06 am 2 Comments | [Add a comment](#)

Actually, Lulu has been in the online video business (at lulu.tv) since this past spring. That directly corresponds with what Hulu does, so there does seem to be significant potential for confusion there.

Posted By Tanner Lovelace, Durham, NC : September 6, 2007 1:04 pm

It is funny that they picked the name Hulu, I think Hulu and Lulu are completely different names and Lulu does not have a case in court (specially the fact that they are in a different businesses). By the way Hulu means Peach in persian (farsi/iranian).

Posted By Ali, Oakland - California : September 6, 2007 11:16 am

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EXHIBIT E-2

When Corporations Forget What Trademarks Are All About: Lulu Vs Hulu

Published by

Sahar Sarid

September 6, 2007 in Domain Names and Business.

Via Techomical:

Lulu Enterprises has brought a lawsuit against N-F Newsite LLC, which operates Hulu (the online video joint venture of NBC Universal and News Corp). The lawsuit accuses Hulu of copyright infringement, unfair and deceptive trade practices, and federal cyberpiracy. The lawsuit claims that Hulu intentionally attempted to create confusion in the marketplace through Hulu's name (which took five months to think up) and internet domain announcements. According to the press release by Lulu, Hulu's trademark filing also identifies products/services that are similar, and some even apparently identical, to Lulu's. Lulu allows users to publish, buy, and sell digital content. They claim to be the #1 self-publishing site, according to Alexa, and claim to have about 1.2 million registered users.

More from the press release:

"We have spent more than five years and tens of millions of dollars in investment successfully building the Lulu brand and website into a place for millions of creators and consumers to publish, buy, sell and manage digital content," said Lulu CEO Bob Young. "It is clear we are required to move quickly to protect our intellectual property and defend ourselves against this infringement before it significantly damages our business."

Trademark infringement is about confusion in the marketplace, not in the mind of corporations and their own perception of reality. I have not heard one person that thought Hulu was remotely related to Lulu. In the quote above Lulu CEO Bob Young said "Significantly damages our business", as if the business is currently being damaged, even slightly. The truth though it is not, for the mere fact there is no active service on Hulu.com of any sort.

This lawsuit sounds to me like a complete abuse of the trademark system. I can imagine the conversation that led to this:

Lulu's corporate attorney: Hulu.com - trademark infringement!

Lulu CEO: Really?

Lulu's corporate attorney: Yea, really. Can't you see?

Lulu's CEO: Hmm, I'm not sure. But if you say so. Let's go after them!

Lulu corporate attorney: Good choice my friend, it's 300\$/hour

4 Responses to "When Corporations Forget What Trademarks Are All About: Lulu Vs Hulu"

1 Wilf

Sep 6th, 2007 at 2:22 am

What about lulu the singer (lulu . co . uk) ? She was there long before lulu.com. Perhaps she could sue lulu.com for infringement?

—ANSWER—

I would think so. Good observation.

2 **steve**

Sep 6th, 2007 at 1:05 pm

Isn't this just link-baiting? I'm sure its gaining Lulu plenty of free publicity.

—ANSWER—

That was my first thought too, but then I was wondering, is any publicity really a good publicity? and it just didn't add up as something that will help their business.

3 **Ken**

Sep 6th, 2007 at 2:33 pm

Hi Sahar,

Here is a similar case we are currently involved with. I would like to know what you think about it.

http://floridaweekly.com/blog/?page_id=52

Thanks,

Ken

—ANSWER—

Sounds like Reverse Domain Name Hijacking however, it is really business as usual in corporate America. The following statistics, from a book called "The offshore advantage" is always in my mind when I hear of IP lawsuits. If my memory serves me right, it goes something like this: the average IP lawsuit in the US is approx 1.5 million dollars

The fight therefore isn't about justice, but about endurance.

Good luck

Sahar

4 **Jamie Parks**

Sep 6th, 2007 at 6:48 pm

HAHA.. great re-enactment! Plaintiff's Lawyer's are outstanding when it comes to confusing creativity with clarity.

EXHIBIT E-3

Is Hulu.com Confusingly Similar to LuLu.com?

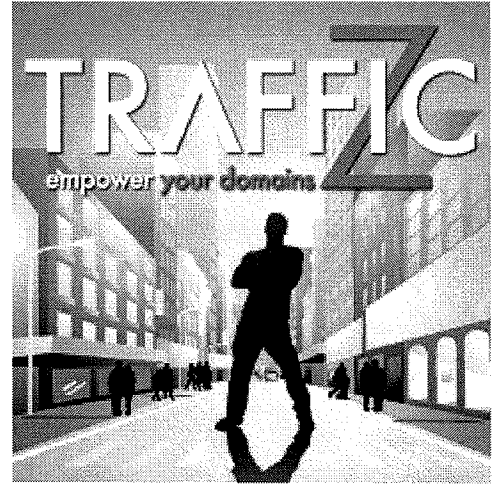
Friday, September 7th, 2007

LuLu.com owner goes after Hulu.com for trademark infringement.

LuLu.com is a self-publishing site. Hulu.com is a soon-to-be-released video site backed by News Corporation and NBC Universal. Is that confusing? According to the owner of LuLu.com, it is. LuLu.com has initiated legal action against Hulu.com, noting that both sites contain “digital content” and have similar domain names, according to a story in the [Guardian](#).

It seems that LuLu.com believes that if you have a four character domain that is one letter off from LuLu.com (and there are about 100 such domains), and you publish some sort of content on your web site (or may in the future), then you are infringing on its trademark:

Bob Young, the chief executive of Lulu.com, described the branding of the rival Hulu service as a threat to the Lulu franchise and \$10m invested in it.



“This is what trademark law is all about,” he told MediaGuardian.co.uk.

“But the big problem is that neither of us know where our businesses are going in the future.

“The odds are we’ll both end doing something other than what we started out to do.

“It is highly likely that in five years time, 80% of our revenues will come from completely different products and services.”

My take is that LuLu.com is either:

- In financial trouble and looking to get cash from a settlement
- Really proud of itself to think that NBC and New Corp want to play off its “good name” (how many of you have seriously heard of LuLu.com before?)
- Looking to get some free publicity

Domainers usually side with the little guy going up against Goliath, but in this case the tables are turned. If LuLu.com were to be successful, how would this be applied to a three letter domain? ABC.com could claim that NBC.com was “confusingly similar”.

Hopefully a judge will quickly toss this out.

- Posted in [Policy & Law](#) by [Andrew](#)

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EXHIBIT E-4

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Copyright 2007 The New York Times Company
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September 10, 2007 Monday
Late Edition - Final

SECTION: Section C; Column 0; Business/Financial Desk; Pg. 6

LENGTH: 465 words

HEADLINE: You Say Hulu. I Say Lulu. Let's Take the Thing to Court.

BYLINE: By BROOKS BARNES

BODY:

NBC Universal and the News Corporation can't seem to catch a break when it comes to a name for their new video-sharing service.

At first, a name was not a priority. The companies, saying they were fed up with piracy of their movies and television programs on YouTube, unveiled plans for the Web site in March and simply called the venture "New Site." A formal name would come later.

That antiseptic moniker bored reporters and bloggers, who make up their own name: "YouTube Killer." Catchy, but much too aggressive, the two companies warned.

Then the partner companies did not utter a peep about an official name for five months -- a time span roughly equivalent to five years on the fast-changing Web. So Google, which bought YouTube for \$1.65 billion in October 2006, decided to help.

In a nod to how highly the Internet giant thinks of the media companies' efforts on the Web, some Google executives started referring to the venture as the "Clown Company." Tech bloggers loved that one.

Then, on Aug. 29, came a new Web site with a message from Jason Kilar, the chief executive of the planned site: "Welcome to Hulu!"

Huh?

Mr. Kilar explained that the name was picked because it is "short, easy to spell, easy to pronounce and rhymes with itself." He added, "Hulu strikes us as an inherently fun name."

But a tiny company in North Carolina was not laughing. The firm, an Internet publisher called Lulu, saw Hulu as a blatant attempt to trample on its good name. Lulu Enterprises filed a trademark infringement lawsuit against Hulu on Wednesday in Federal District Court in Raleigh.

In the lawsuit, Lulu's founder, Bob Young, accused the media giants of unfair competition and cyberpiracy. "Widespread consumer confusion will occur and Lulu will be irreparably harmed," Mr. Young said in the complaint.

You Say Hulu. I Say Lulu. Let's Take the Thing to Court. The New York Times September 10, 2007 Monday

Robert Thompson, a professor of media and popular culture at Syracuse University, is not so sure consumers will be confused by the two names. He is sure that he does not like the name Hulu, saying, "The communication revolution is finally here and its name is Hulu? Seriously?"

Mr. Young has experience playing the underdog in a corporate spat. Before Lulu, he was chief executive of Red Hat, a software publisher that tried to challenge Microsoft's dominant position in the late 1990s.

A spokeswoman for Hulu declined to comment on the lawsuit. Executives at NBC Universal, a subsidiary of Vivendi and General Electric, said the name was one of at least a dozen considered, and Hulu was cleared by lawyers before its introduction.

For now, both sides are enjoying a spike in attention from Lulu v. Hulu. And while Hulu is staying quiet, Mr. Young of Lulu has been having a great time noting that the word "hulu" in Swahili means "cease and desist".

URL: <http://www.nytimes.com>

LOAD-DATE: September 10, 2007

EXHIBIT E-5

**The Motley Fool**
Fool.com[Previous Page](#)

Boo-Hoo, Lulu to Sue Hulu

<http://www.fool.com/investing/general/2007/09/07/boo-hoo-lulu-to-sue-hulu.aspx>

Rick Aristotle Munarriz
September 7, 2007

Tired of seeing their copyrights trampled on by video-sharing sites like YouTube, **News Corp.** (NYSE: **NWS**) and **General Electric's** (NYSE: **GE**) NBC Universal are now just a month away from launching their own solution, Hulu.com. However, in a role reversal, customized merchandise specialist Lulu.com is suing Hulu for the exact same reason.

Lulu offers creative types the ability to sell books, CDs, and DVDs through its on-demand storefront, which prints individual copies as the items are sold. Since Hulu's aim is to deliver creative content virtually, Lulu feels that the trade names -- and general bents -- are too close for comfort.

Maybe the Hulu moniker is cursed. TechCrunch pointed out how the name doesn't have the best of translations in certain languages, like the word "butt" in both Indonesian and Malay. The blog had also poked fun at the far-reaching trademark application that aims to cover Hulu's potential to ultimately roll out things like branded pantyhose, pencil cases, and globes.

Interesting, no?

But where does one draw the line? We've had FoolU.com around for ages. Can The Motley Fool get in on that action? **Yahoo!** (Nasdaq: **YHOO**) is a phonetic cousin, twice removed, from Hulu. Does the search-engine star get a shot?

I'm not out to belittle Lulu's claim. I'm no legal expert. The company may very well be entitled to bump Hulu over to a new dot-com homestead.

The thing I find most interesting is that the two companies that figured they could get away from all of the rampant disregard for intellectual capital protection are now on the other end of the gun.

You have to wonder how much scrutiny NBC can take. It made headlines in recent days when it ditched the iTunes video store to sell its television shows digitally through **Amazon.com** (Nasdaq: **AMZN**).

Apple is still chuckling about the move at NBC's expense. During **Apple's** (Nasdaq: **AAPL**) media event, Steve Jobs was demonstrating how its new iTunes ringtones can be personalized to identify who is calling.

"That's when NBC calls," Jobs quipped when John Lennon's "Give Peace a Chance" kicked in.

Hulu? Funny name. Serious business.

Other stories about the new online consortium:

- [You're Going Down, GooTube](#)
- [Good Luck Killing YouTube](#)
- [Mr. Softy Steps Off Its Soapbox](#)

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EXHIBIT E-6

Away With Words

Names, brands, writing, and the quirks of the English language.

[« How Ralston Purina Got Its Name | Main | The Lick Fire »](#)

Big Hulu and Little Lulu

More on the [Hulu brouhaha](#):

[The Guardian \(UK\) reports](#) that self-publishing site [Lulu](#) is suing News Corporation and NBC Universal, parents of the Hulu video-sharing venture, for trademark infringement:

Bob Young, the chief executive of Lulu.com, described the branding of the rival Hulu service as a threat to the Lulu franchise and \$10m invested in it.

"This is what trademark law is all about," he told MediaGuardian.co.uk.

"But the big problem is that neither of us know where our businesses are going in the future.

"The odds are we'll both end doing something other than what we started out to do.

"It is highly likely that in five years time, 80% of our revenues will come from completely different products and services."

According to the article, Young named Lulu.com "after his pet name for his three daughters, but [the name] is also American slang for a remarkable person or thing." After *all three* of his daughters? That must be a mistake, or else he has three very confused girls.

Good to know:

[Young] said that Lulu.com has had no commercial issues with other similar domains, such as the site of the pop singer Lulu, because they focus on different business areas.

I say: Hulu, Lulu, [Gulu](#), [Mulu](#), [Sulu](#), [Vulu](#), [Xulu](#), [Yulu](#), [Zulu](#)--can't we all just get along?



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Hat tip to linguist and news sleuth extraordinaire [Ben Zimmer](#) of [Language Log](#) and the Oxford University Press blog [From A to Zimmer](#).

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